

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN THE MATTER OF:  
**WALTER EMBRICH,**  
**TERRA EMBRICH,**

Debtor(s)

Case No: B-1180862 C-13D

OBJECTION BY STANDING TRUSTEE TO CONFIRMATION OF PLAN

NOW COMES Richard M. Hutson, II, Standing Trustee (“Trustee”) and respectfully objects to confirmation of the Debtors’ plan pursuant to 11 U.S.C. §1325 and shows unto the Court the following:

1. The Debtors filed a petition under Title 11 of the United States Code, Chapter 13, on May 27, 2011, in the United States Bankruptcy Court for the Middle District of North Carolina.
2. On May 27, 2011, Richard M. Hutson, II, was appointed as Trustee.
3. This Court has proper and personal jurisdiction of the subject matter hereof and over the parties pursuant to 28 U.S.C. §§151, 157 and 1334, and the Local Rule 83.11 entered by the United States District Court for the Middle District of North Carolina and this is a core proceeding within 28 U.S.C. §157(b).
4. The plan filed by the Debtors proposes a monthly payment of \$2,262.00 for a period of 60 months. Unsecured creditors will not receive any dividend.
5. Wells Fargo has filed a claim in the amount of \$133,970.77 secured by the Debtors’ real property at 315 Buckeye Drive, Raeford, NC (“the real property”). The claim asserts ongoing monthly mortgage payments of \$888.32 and an arrearage through August of 2011 in the amount of \$7,016.73. The Debtors’ plan proposes to pay the claim of Wells Fargo as a long-term debt through the Trustee’s office and any arrearage as a secured claim.
6. The Debtors’ plan further provides that the claim of Ford Motor Credit Company (“Ford Credit”) secured by a 2010 Ford Fusion shall be paid as secured in the amount of \$29,493.89 with interest at the rate of 5.25% per annum in monthly installments of \$578.26.

7. The Debtors' plan further provides that the claim of Ford Motor Credit Company ("Ford Credit") secured by a 2010 Ford Explorer shall be paid as secured in the amount of \$22,048.10 with interest at the rate of 5.25% per annum in monthly installments of \$433.24.
8. The Debtors' plan further provides that the claim of Polaris secured by a 2007 Victory motorcycle ("the motorcycle") shall be paid as secured in the amount of \$7,265.00 with interest at the rate of 5.25% per annum in monthly installments of \$142.87.
9. The Trustee objects to confirmation of the plan in that the Debtors' proposed plan payments are not sufficient to satisfy the long-term debt of Wells Fargo, the arrearage claim of Wells Fargo, the secured claims of Ford Credit and Polaris, and all other secured and priority claims within the 60 month time limitation of 11 U.S.C. §1322(d).

WHEREFORE, the Trustee prays the Court for an Order as follows:

1. That the Debtors' plan not be confirmed in that the plan does not comply with 11 U.S.C. §1325 and the case be dismissed for cause pursuant to 11 U.S.C. §1307;
2. That, in the alternative, the Debtors' plan payments be increased to \$2,319.00 per month for 60 months; or
3. For such other and further relief as the Court may deem just or proper.

This the 20<sup>th</sup> day of July, 2011.

/s/ Benjamin E. Lovell  
Benjamin E. Lovell  
Attorney for the Trustee  
State Bar No: 23266  
P.O. Box 3613  
Durham, N.C. 27702

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon John T. Orcutt, Esq., 6616-203 Six Forks Rd., Raleigh, NC 27615, Walter & Terra Emnich, 315 Buckeye Dr., Raeford, NC 28376, and Michael D. West, Esq., U.S. Bankruptcy Administrator, PO Box 1828, Greensboro, NC 27402 by depositing a copy of same in the United States Mail, postage prepaid, and in the manner prescribed by Rule 5 of the Federal Rules of Civil Procedure.

This 20<sup>th</sup> day of July, 2011.

s/Benjamin E. Lovell  
Benjamin E. Lovell, Esq.  
Attorney for the Standing Trustee